

103D CONGRESS
1ST SESSION

S. 221

To allow a prisoner under sentence of death to obtain judicial review of newly discovered evidence showing that he is probably innocent.

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM (for himself and Mr. HATFIELD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To allow a prisoner under sentence of death to obtain judicial review of newly discovered evidence showing that he is probably innocent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 Section 1651 of title 28, United States Code, is
4 amended by adding at the end the following:

5 “(c)(1) At any time, and notwithstanding any other
6 provision of law, a district court shall issue any appro-
7 priate writ or relief on behalf of an applicant under sen-
8 tence of death, imposed either in Federal or in State court,
9 who establishes that he is probably innocent of the offense
10 for which the death sentence was imposed.

1 “(2) On receipt of an application filed pursuant
2 to paragraph (1), a district court shall promptly stay
3 the applicant’s execution pending consideration of
4 the application and, upon an unfavorable disposition,
5 until the court’s action is affirmed on direct review.

6 “(3) The court shall dismiss the application,
7 unless it alleges facts, supported by sworn affidavits
8 or documentary evidence, that—

9 “(A) could not have been discovered
10 through the exercise of due diligence in time to
11 be presented at trial; and

12 “(B) if proven, would establish that the
13 applicant is probably innocent.

14 “(4) If the court determines that the applicant
15 is currently entitled to pursue other available and ef-
16 fective remedies in either State or Federal court, the
17 court shall suspend its consideration of the applica-
18 tion under this section until the applicant has ex-
19 hausted those remedies. The stay issued pursuant to
20 paragraph (2) shall remain in effect during such a
21 suspension.”.

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